

NTSB Order No. EA-5380

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 14th day of April, 2008

Dockets SE-17587
and SE-17588

¹ Section 821.50(d) of the Board's Rules of Practice provides that repetitious petitions for reconsideration "will not be entertained by the Board and will be summarily dismissed."

states in his response, respondents' arguments "do not reflect any understanding that the real issue ... concerns the scope of the Board's jurisdictional authority." We have followed, not departed from, our precedent. Our opinion and order cited several cases on this specific issue. We note, on a practical level, that the bulletin does not mandate a particular action; it states that certain deviations should *normally* be addressed by administrative action. So, there is no clear indication of a nondiscretionary policy within the FAA that was violated by this enforcement action.

Respondents cite the same cases from their appeal brief in support of their argument for reconsideration. Again, as noted by the Administrator, we distinguished the cases cited by respondents because they did not involve the application of an FAA policy that pertained to the Administrator's decision to proceed with enforcement action.

Finally, we reject respondents' argument that Administrator v. McColl, NTSB Order No. EA-4315 (1995), confers jurisdiction to review the Administrator's discretion to pursue enforcement action. As the Administrator states, McColl is distinguishable primarily because the FAA did not raise the jurisdictional argument; the law judge affirmed the Administrator's order. It was Mr. McColl who appealed the affirmation of the order of suspension. Any discussion of the jurisdictional implications of the bulletin is purely *dicta*. The result in McColl, in fact, was that the Board affirmed the Administrator's order suspending Mr. McColl's commercial pilot certificate. Mr. McColl's argument, rejected by the Board, was the same as the one here—that the Administrator acted contrary to his own policy contained in Bulletin 86-1 and that the enforcement action should not have been initiated.²

The Board is "bound by all validly adopted interpretations of law and regulations" of the Administrator, unless we find that such interpretation is "arbitrary, capricious, or otherwise not in accordance with law." 49 U.S.C. § 44709(d)(3). On the facts before the Board, there is insufficient evidence to convince us that the Administrator was arbitrary or capricious in choosing to proceed to enforcement action in this case.

Respondents cite Ramaprakash v. FAA and NTSB, 346 F.3d 1121 (D.C. Cir. 2003). They argue that the United States Circuit Court of Appeals would overturn this case because the Board has reversed "long-standing precedent" without giving any reason for

² We note also that the result in the instant case is the same as that in one of the other cases (Administrator v. Brasher, 5 NTSB 2116 (1987)) cited by respondents: affirmation of the alleged violations and waiver of sanction.

that departure. We note that our decision follows precedent and that it has been fully explained.

ACCORDINGLY, IT IS ORDERED THAT:

Respondents' petition for reconsideration is denied.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above order.